IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

NANCY RIVERA MATÍAS BY HER AND AS INHERITOR OF RICARDO CINTRÓN RIVERA; NARISHA CINTRÓN RIVERA BY HER AND AS INHERITOR OF RICARDO CINTRÓN RIVERA

Plaintiff

vs.

BIO-MEDICAL APPLICATIONS OF AGUADILLA, INC. D/B/A BMA AGUADILLA AND/OR FRESENIUS MEDICAL CARE; X, Y AND Z INSURANCE COMPANIES; JOHN DOE; MARK DOE; JOE DOE; CLARK DOE

Defendants

CIVIL NO. 17-1462

PLAINTIFFS REQUEST

A TRIAL BY JURY

COMPLAINT

Plaintiffs, Nancy Rivera Matías and Narisha Cintrón Rivera by them and as inheritors of Ricardo Cintrón Rivera, and represented by their attorney, hereby allege, state and pray against Defendants:

I. JURISDICTION

1. This Honorable Court has jurisdiction over the present actions pursuant to 28 U.S.C. § 1332 related to the plaintiffs; over state law claims under Articles 1802 and 1803 of the Civil

Code of Puerto Rico, section 5141 et. seq. of Title 31 of the Laws of Puerto Rico Annotated, 31 P.R. Laws Ann. §§ 5141 and 5142, et. seq.; as much as total diversity of citizenship exists between plaintiffs and defendants, and the amount in controversy exceeds the sum of $75,000.00, exclusive of interests and costs.

2. Venue is accordingly invoked pursuant to the dictates of 28 USC § 1391 (a) and 29 USC § 1391(b). The substantial part of the relevant events occurred in Aguadilla, Puerto Rico. The damages occurred in Aguadilla, Puerto Rico.

II. IDENTIFICATION OF PLAINTIFF

3. Plaintiff(s), Nancy Rivera Matías and Narisha Cintrón Rivera by them and as an inheritors of Ricardo Cintrón Rivera, are adults and at all material times was(were) a resident(s) of Rincon, at the Commonwealth of Puerto Rico; with intention to live and domicile in Puerto Rico at the time that the complaint was filed.

I. IDENTIFICATION OF DEFENDANTS

4. Defendant, Bio-Medical Applications of Aguadilla, Inc. doing business as BMA Aguadilla and/or Fresenius Medical Care, with the principal place of business in Waltham, Massachusetts; and incorporated and organized under the laws of the Delaware at the time the complaint was filed.

5. X, Y and Z Insurance Companies are the fictitious names of the insurance's companies whose places of business are in state or territory other than Puerto Rico. They had at all relevant times an insurance's policy to cover the damages alleged in the Complaint. They are designated with these names because their true identities are not known at the present time.

6. John and Mark Doe are citizens of the United States but residents of a state or territory other than Puerto Rico. They are designated with these names because their true identities are not known at the present time.

7. Joe and Clark Doe are corporations organized under the laws and with their principal place of business in a state or territory other than Puerto Rico. They are designated with these names because their true identities are not known at the present time.

IV. THE OCCURRENCE

8. Plaintiffs hereby repeat the averments of paragraphs 1 through 7 as though fully set forth herein.

9. On April 8, 2016, Mr. Ricardo Cintrón Rivera fell and broke a rib when he hit the handle of a chair within the premises of Bio-Medical Applications of Aguadilla, Inc. doing business as BMA Aguadilla and/or Fresenius Medical Care(from now on named as BMA Aguadilla). On April 17, 2016, Mr. Ricardo Cintrón Rivera died due to the injury that he suffered on April 8, 2016 at the facilities of BMA Aguadilla.

10. Mr. Ricardo Cintrón Rivera fractured his ribs when he fell on April 8, 2016. The injury caused corporal trauma complications to Mr. Ricardo Cintrón, which end in his death. The fell at BMA Aguadilla's physical facilities caused the death of Mr. Ricardo Cintrón.

11. For a long time before April 8, 2016, Mr. Ricardo Cintrón was receiving dialysis treatment at the physical facilities of BMA Aguadilla. The treatment of dialysis was provided by BMA Aguadilla. The record evidence that Mr. Ricardo Cintron gets dizzy when he receives dialysis treatment.

12. Since a long time BMA Aguadilla had knowledge that Mr. Ricardo Cintrón gets dizzy during and after the dialysis treatment.

13. Because usually Mr. Ricardo Cintrón gets dizzy; BMA Aguadilla usually and continuously took him in a vehicle to his

house after the dialysis treatment in a vehicle. BMA Aguadilla had knowledge that he gets dizzy during and after the dialysis treatment; because that was the reason that they transport him to his house after the dialysis treatment.

14. Furthermore, two or three days before April 8, 2016, Mr. Ricardo Cintrón fell at the facilities of BMA Aguadilla immediately after the dialysis treatment. Defendants knew that Mr. Ricardo Cintrón gets dizzy during and after his treatment.

15. BMA Aguadilla could reasonably foresee that Mr. Ricardo Cintrón could suffer an injury and fall; that was why they transport him to his house in a vehicle after the dialysis treatment before April 8, 2016.

16. On April 8, 2016, when Mr. Ricardo Cintrón was receiving the dialysis treatment at BMA Aguadilla; and during the middle of the treatment he needed to go to the restroom. Defendants knew that he gets dizzy. The nurse took him to the bathroom in order to escort him; because she knew that he could get dizzy. Mr. Ricardo Cintrón needed the escort from the bathroom to the dialysis chair, so that he does not suffer an injury. He needed the help from the nurse.

17. The nurse escort took Mr. Ricardo Cintrón to the bathroom during the middle of the dialysis treatment at the physical facilities of BMA Aguadilla; but she did not wait for him in order to escort him back to the dialysis chair in order

to continue to receive the dialysis treatment. He came out of the bathroom approximately three or four minutes after the nurse escort him to the bathroom. She was not available, then he tried to return to the dialysis treatment chair, and had the accident.

18. The employer of the nurse was BMA Aguadilla.

19. The nurse was negligent when she left Mr. Ricardo Cintrón at the bathroom; and she did not wait for him in order to escort him back to the chair in order to continue to get the dialysis treatment. She only had to wait for him for three or four minutes after she left him in the bathroom. Defendants were negligent because the nurse did not wait for Mr. Ricardo Cintrón to come out of the bathroom three or four more minutes, and escort him to the chair where he was going to continue to receive the dialysis treatment. Defendants were negligent because the nurse had only to wait two or three minutes after he came out of the bathroom, in order to escort him to the bathroom.

20. BMA Aguadilla was responsible of the plaintiff's damages and the death of Mr. Ricardo Cintrón; because it was forseeable that he could fall and suffer an injury. The accident and death could have been prevented.

21. Mr. Cintrón needed special care to travel to the bathroom escorted by a nurse. Defendant(s) knew it because the(its) nurse took Mr. Ricardo Cintrón to the bathroom.

22. It was forseeable, that Mr. Ricardo Cintrón could fall, and it was preventable.

23. It was foresseable for the nurse that was employed by BMA Aguadilla, that he could fall if he goes to the bathroom in the middle of the dialysis treatment. That was the reason, she escort him to the bathroom.

24. The supervisor of the nurse that was employed by BMA Aguadilla admitted to the wife of Mr. Ricardo Cintrón, that nurse did not wait for Mr. Cintrón after he came out. The wife of Mr. Ricardo Cintrón verbally confronted the supervisor. She stated to the supervisor that the nurse did not wait for Mr. Ricardo Cintrón at the bathroom, then she questioned her why she did not wait, and the supervisor never denied that statement. That was an admission from the supervisor and of the defendants. The supervisor was working at the time the conversation took place, and it was part of her duties.

25. Furthermore, during the conversation with the supervisor, the wife of Mr. Ricardo Cintrón told the supervisor, that the nurse when she saw Mr. Ricardo Cintrón at the floor bleeding after the fell; she started crying and stated that she will be fired. The supervisor did not deny the statement, which was an admission from her part of the negligence. The supervisor admitted that the nurse was fired.

26. Defendant(s) by conduct of the nurse assume the responsibility to take Mr. Ricardo Cintrón to the bathroom, and were negligent to not return him to the chair to continue the dialysis treatment. The nurse had then the duty to return him to the dialysis chair. They assume such duty by the acts of the nurse.

27. Defendant(s) acts and omissions did not comply with the reasonable care and attention required by the circumstances.

28. Defendants were negligent due to Mr. Ricardo Cintrón's conduct described before, due to his capacity to care for himself, and defendant(s)' actual information regarding his condition of dizziness during and after the dialysis treatment.

29. Defendant(s) is(were) liable because its(their) acts and omissions were foresseable to a reasonable and prudent man. Defendant could have reasonably foreseen and prevent the accident of Mr. Ricardo Cintrón.

30. Mr. Ricardo Cintrón was the father of Narisha Cintrón Rivera, and the husband of Nancy Rivera Matías.

31. Defendants had knowledge, should have known, had notice or constructive knowledge that Mr. Ricardo Cintrón gets dizzy during and after the dialysis treatment.

V. NEGLIGENCE

32. Plaintiffs incorporate by reference the preceding allegations as thought the same were fully set forth herein at length.

33. The standard of care required of a hospital is that of reasonable care and attention required by the circumstances, considering the patient's conduct, his capacity to care for himself, and the hospital's actual information regarding his condition. The hospital is liable for the damages that are reasonably forseeable and preventable and not for all hazards imaginable that could threaten the patient's security. It cites Hernández v. The Capital, 81 P.R.R. 998, 1005(1960).

34. The hospital can be responsible of the damages that are forseeable and that could have been prevented. Lugo Pérez vs. Santo Asilo de Damas y La Asociación de las Señoras Damas del Santo de Ponce, 89 D.P.R. 247, 250(1963).

35. The accident as aforesaid was solely caused by the negligent acts and/or omissions of the Defendants, by their agents, servants, workmen and/or employees within the course and scope of their employment and in furtherance of the business of Defendants and was due in no matter whatsoever to any negligence on the part of the Plaintiffs.

36. Co-defendants are liable for their acts, omissions, and/or negligence; and also they are liable for the acts,

omissions and/or negligence of their employees and/or agents, pursuant to Articles 1802 and 1803 of the Civil Code of Puerto Rico. This was the adequate and/or proximate cause of plaintiffs' damages. Also, defendants were liable for their own negligence, acts and/or omissions, and for the negligence, acts and/or omissions of their employees, agents or subcontractors, under the respondent superior doctrine.

37. Co-defendants had the duty to anticipate the damages suffered by the plaintiffs. They breach the duty of care to foresee the reasonable consequence caused to the plaintiffs. This duty applies to a reasonable prudent man. Elba A.B.M. vs. U.P.R., supra, 309; and Soc. De Gananciales, Etc., v. Presbyterian Hosp., 88 D.P.R. 391, 399(1963).

38. Defendants were negligent, because their acts and/or omissions were not of a man of normal or ordinary diligence, of a good family father, and/or of a common or ordinary prudent man. Gierbolini vs. Employers Fire Ins. Co., 104 D.P.R. 853, 859-861(1976). Defendant's breach of this duty(ies) is the direct, proximate and/or adequate cause of plaintiffs' damages.

39. Pursuant to the Puerto Rico Insurance Code a casualty or liability insurance carrier is independently liable in a direct action to the plaintiffs, for any negligence, fault or condition insured against, up to the merits of liability of the insurance contract.

V. DAMAGES

40. Plaintiffs have suffered serious mental anguish and moral pain as a result of the accident of his father due to defendants' negligence. Narisha was pregnant at the time of the accident, and during her pregnancy she suffered so much due to the death of her father. She cried too much and even loss her hair due to the stress she had when her father died. The pain and suffering remained after the injury of his father. Nancy has lost concentration, and cried many times due to the death of Ricardo. They reasonably estimate these injuries in the amount of two million dollars ($2,000,000.00), for plaintiffs. Co-defendants' acts and/or omissions stated within this Complaint caused plaintiffs' damages.

41. Plaintiffs have suffered tremendous pain and suffering due to accident of Ricardo Cintron. They view life in a more negative manner. They cannot socialize and go out like they used to due; because they remember so much Ricardo, and they refuse to socialize or go out like they did prior to April 8, 2016; which is much harder to enjoy it. Plaintiffs' damages, due to the loss of enjoyment of life, are reasonably estimated in the amount of eight hundred thousand dollars ($800,000.00). Molzf vs. U.S., 112 S. Ct. 711 (1992), Gumbs vs. Pueblo International,

Inc., 823 F. 2d 768, 774 (3rd Cir. 1987), Nemmers v. U.S., 795 F 2d. 628, 634 (7th Cir. 1986) and Gutiérrez-Rodríguez v. Cartagena, 882 F 2d 768 (1st. Cir. 1, 1989). Co-defendants' acts and/or omissions stated within this Complaint caused plaintiffs' damages.

42. Plaintiffs now responsible to cover the part of a mortgage and a car loan that Mr. Ricardo used to pay, had lost work payments, payments made during period of time after the accident and before the death to third parties, and/or claim the medical expenses incurred by his father. They request the economic damages for the amount of eighty thousand dollars ($80,000.00). Plaintiffs claim any future economic damages. Co-defendants' acts and/or omissions stated within this Complaint caused plaintiff's damages. Plaintiffs' claim this damage.

43. Plaintiffs as an inheritors of Ricardo Cintrón Rivera, claims the pain and suffering of Mr. Ricardo Cintrón Rivera. Ricardo suffered for approximately ten days before he died due to the accident at the facilities at BMA Aguadilla. Mr. Ricardo Cintrón Rivera was in constant pain after the accident. They reasonably estimate these injuries in the amount of one million dollars ($1,000,000.00), for plaintiffs. Co-defendants' acts and/or omissions stated within this Complaint caused plaintiffs' damages.

44. Plaintiffs demand trial by jury.

WHEREFORE, very respectfully plaintiffs demand judgment in their favor and against Defendants jointly, severally and/or individually in an amount in excess of $3,880,000.00, exclusive of interest and costs, plus additional compensatory and/or consequential damages allowed by law, together with interest, cost, attorney's fees and any other relief this Honorable Court deems just and proper.

RESPECTFULLY SUBMITTED.

HEREBY CERTIFY: I hereby certify that on 7 day of April, 2017, I electronically filed the foregoing with the Clerk of the Court, using CM/ECF system which will send notification of such filing.

In San Juan, Puerto Rico, this 7 day of April, 2017.

s/Glenn Carl James
Glenn Carl James, Esq.
USDC-PR 207,706
JAMES LAW OFFICE
PMB 501
1353 Luis Vigoreaux Ave.
Guaynabo, PR 00966-2700
Tel.(787)763-2888
Fax:(787)763-2881
E-mail:
glenncarljameslawoffices@gmail.com